



NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

John Adams Hurson
*Chairman, Health & Government
Operations Committee
Maryland House of Delegates
President, NCSL*

James E. Greenwalt
*Director, Senate Information Systems
and Administrative Services
Minnesota
Staff Chair, NCSL*

William T. Pound
Executive Director

Tuesday, July 26, 2005

The Honorable Dennis Hastert
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
Washington, DC 20515

RE: H.R. 5 , the "Help Efficient, Accessible, Low-Cost, Timely Healthcare (HEALTH) Act of 2005."

Dear Speaker Hastert and Representative Pelosi:

On behalf of the National Conference of State Legislatures, I am writing to express strong, bipartisan opposition to the passage of federal medical malpractice legislation, H.R.5 , the "Help Efficient, Accessible, Low-Cost, Timely Healthcare (HEALTH) Act of 2005," which is scheduled for a vote in the House of Representatives on Wednesday, July 27.

Medical malpractice, product liability and other areas of tort reform are areas of law that have been traditionally and successfully regulated by the states. Since the country's inception, states have addressed the myriad of substantive and regulatory issues regarding licensure, insurance, court procedures, victim compensation, civil liability, medical records and related matters. In the past two decades, all states have explored various aspects of medical malpractice and products liability and chosen various means for remedying identified problems. **To date, twenty-nine states have enacted medical malpractice legislation in their 2005 legislative sessions.**

NCSL's Medical Malpractice policy explicitly and firmly states that "American federalism contemplates diversity among the states in establishing rules and respects the ability of the states to act in their own best interests in matters pertaining to civil liability due to negligence." That diversity has worked well even under the most trying and challenging circumstances. The adoption of a one-size-fits-all approach to medical malpractice envisioned in H.R. 5 and other related measures would undermine that diversity and disregard factors unique to each particular state.

Federal medical malpractice legislation inappropriately seeks to preempt various areas of state law. All 50 states have statutes of limitations for medical malpractice suits. All 50 states have rules of civil procedure governing the admissibility of evidence and the use of expert witnesses. More than half of the states have caps on noneconomic damages and limitations on attorney's fees in medical malpractice cases.

Denver
7700 East First Place
Denver, Colorado 80230
Phone 303.364.7700 Fax 303.364.7800

Washington
444 North Capitol Street, N.W. Suite 515
Washington, D.C. 20001
Phone 202.624.5400 Fax 202.737.1069

Website www.ncsl.org

March 14, 2005

p. 2

This issue was scrutinized again at NCSL's last Fall Forum. Our review included assessing whether circumstances had developed or were so unique that only federal action could provide an adequate and workable remedy. We again examined recent state actions, policy options and experiences. We discussed at length how various proposed or anticipated pieces of federal legislation fared against NCSL's core federalism questions. Those questions included (1) whether preemption is needed to remediate serious conflicts imposing severe burdens on national economic activity; (2) whether preemption is needed to achieve a national objective; and (3) whether the states are unable to correct the problem. **The resounding bipartisan conclusion was that federal legislation is unnecessary.**

NCSL's opposition extends to any bill or amendment that directly or indirectly preempts any state law governing the awarding of damages by mandatory, uniform amounts or the awarding of attorney's fees. Our opposition also extends to any provision affecting the drafting of pleadings, the introduction of evidence and statutes of limitations. Furthermore, NCSL opposes any federal legislation that would undermine the capacity of aggrieved parties to seek full and fair redress in state courts for physical harm done to them due to the negligence of others.

Thank you for your consideration of our concerns. For additional information, please contact Susan Parnas Frederick (202-624-3566) or Trina Caudle(202-624-8695) in NCSL's Washington, D.C. office.

Respectfully,

A handwritten signature in black ink, reading "Michael Balboni". The signature is fluid and cursive, with the first name "Michael" written in a larger, more prominent script than the last name "Balboni".

Senator Michael Balboni
New York Senate
Chair, NCSL Law & Criminal Justice Committee

Cc: Members of the U.S. House of Representatives